



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2018-0838

RIN 1625-AA00

Safety Zones, Hurricane Lane Port Closures for Hawaiian Islands

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing 9 temporary safety zones encompassing Hawaii's commercial harbors to include Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaunapali, Lanai; Kahului, Maui; and Kawaihae and Hilo on the Island of Hawaii. These temporary safety zones are necessary to protect the harbors from the potential impacts of Hurricane Lane and when enforced functionally close the port to commercial vessel traffic and require the evacuation of vessels in accordance with the Coast Guard Sector Honolulu Heavy Weather and Hurricane Plan.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until August 29, 2018. For the purposes of enforcement, actual notice will be used from August 22, 2018, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0838 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John E. Bannon, Waterways Management Division, U.S. Coast Guard; telephone 808-541-4359, email John.E.Bannon@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Honolulu
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule due to the imminent approach of Hurricane Lane and its potential impacts to the island of Hawaii. Closing the ports and ordering evacuation of vessels over 200 gross tons is in accordance with Coast Guard Sector Honolulu’s Maritime Heavy

Weather and Hurricane Plan. It is impracticable to publish an NPRM because of the rapid escalation of the tropical storm to hurricane status and the imminent threat posed.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the rule's objectives of enhancing safety of life on the navigable waters and protection of persons and vessels due to the imminent threat of the approaching hurricane.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Honolulu (COTP) has determined that potential hazards associated with Hurricane Lane constitute a safety concern for all commercial harbors in Hawaii. This rule is needed to protect personnel, vessels, maritime commercial facilities, and the marine environment in the navigable waters of Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaunapali, Lanai; Kahului, Maui; and Kawaihae and Hilo on the Island of Hawaii. This temporary rulemaking implements the closure of the port and evacuation of vessels called for in the Coast Guard Sector Honolulu Heavy Weather & Hurricane Plan. Consistent with the Plan, the Captain of the Port finds sufficient indications that the approaching Hurricane Lane poses considerable safety concerns, creating the need for these safety zones.

IV. Discussion of the Rule

This rule establishes nine safety zones encompassing Hawaii's 9 commercial harbors; Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaunapali, Lanai; Kahului, Maui; and Kawaihae and Hilo on the Island of Hawaii. The Coast Guard is closing all commercial harbors to vessels over 200 gross tons, in accordance with the Coast Guard Sector Honolulu's Heavy Weather & Hurricane Plan and requires the

evacuation of all vessels over 200 gross tons . Notice of actual port closure times will be given to the maritime community via marine safety information bulletins and broadcast notice to mariners. All vessels unable to comply with this safety zone and seeking to remain in port, must submit a request to remain in port detailing vessel specifics and a mooring plan for approval from the Captain of the Port. Vessels are not authorized to enter or remain in port without the specific authorization of the COTP Honolulu. The harbors will remain closed until the Coast Guard issues an “All Clear” for the harbor after the storm passes and a survey of the Harbor for potential hazards is completed by the Coast Guard.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the anticipated short duration of the storm and protection of personnel, vessels, maritime commercial facilities, and the marine environment from potential impacts of Hurricane Lane. Moreover, the Coast Guard will issue marine safety

information bulletins and broadcast notice to mariners on marine channel 16 about the safety zones and the rule allows vessels to seek permission to enter the safety zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator. This rule may affect the following small entities: the owners or operations of vessels intending to transit, anchor, or moor within nine safety zones encompassing Hawaii’s 9 commercial harbors; Nawiliwili and Port Allen, Kauai; Barber’s Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaumalapau, Lanai; Kahului, Maui; and Kawaihae and Hilo on the Island of Hawaii between August 22, 2018 and August 29, 2018. Upon passing of the hurricane and verification of the safety of the waterways, all vessels will be allowed to reenter or exit the commercial ports of Hawaii as soon as reasonably expected and safe to allow.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones lasting 7 days that will prohibit entry into 9 Hawaii commercial harbors; Nawiliwili and Port Allen, Kauai; Barber's Point and Honolulu Harbor, Oahu; Kaunakakai, Molokai; Kaunapali, Lanai; Kahului, Maui; and Kawaihae and Hilo on the Island of Hawaii. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination will be made available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-0838 to read as follows:

§ 165.T14-0838 Safety Zones, Hurricane Lane Port Closures for Hawaiian Islands.

- (a) **Location.** The following commercial harbors are safety zones:

- (1) All waters of Barber's Point Harbor, Oahu inland from a line drawn between 21° 19'30"N, 158° 07'14"W and 21° 19'18"N, 158° 07'18"W;

- (2) All waters of Honolulu Harbor, Oahu inland from a line drawn between 21° 17'56"N, 157° 52'15"W and 21° 17'45"N, 157° 52'10"W;

- (3) All waters of Kaunakakai Harbor, immediately adjacent to the Interisland Cargo Terminal out to 100 yards of the west face of the pier;

(4) All waters of Kaunapali Harbor, Lanai inland from a line drawn between 20° 47'10"N, 156° 59'32"W and 21° 47'01"N, 156° 59'31"W;

(5) All waters of Kahului Harbor, Maui inland from a line drawn between 20° 54'01"N, 156° 28'26"W and 20° 54'02"N, 156° 28'18"W;

(6) All waters of Kawaihae Harbor, Hawaii inland from a line drawn between 20° 02'14"N, 158° 50'02"W and 20° 02'19"N, 155° 49'55"W;

(7) All waters of Hilo Harbor, Hawaii inland from a line drawn between 19° 44'17" N, 155° 05'22"W and 19° 44'34"N, 155° 04'31"W.

(8) All waters of Nawiliwili Harbor, Kauai inland from a line drawn between 21° 56'58"N, 159° 21'28"W and 21° 57'11"N, 159° 21'10"W;

(9) The Port Allen, Kauai from all waters immediately adjacent to the Department of Transportation commercial pier (located at 21° 53'59"N, 157° 35'21"W) extending out to 100 yards from the piers faces;

(b) Regulations. The general regulations governing safety zones contained in 33 CFR 165.23, Subpart C, apply to the safety zones created by this temporary final rule.

(1) All persons and vessels are required to comply with the general regulations governing safety zones found in 33 CFR part 165.

(2) Entry into or remaining in this zone is prohibited unless authorized by the COTP Honolulu or his designated representative.

(3) Persons or vessels desiring to transit the safety zones identified in paragraph (a) of this section may contact the COTP Honolulu through his designated representatives at the Command Center via telephone: (808) 842-2600 and (808) 842-2601; fax: (808) 842-2642; or on VHF channel 16 (156.8 Mhz) to request permission. If permission is

granted, all persons and vessels must comply with the instructions of the COTP Honolulu or his designated representative.

(5) The commercial ports of the Hawaiian Islands will be closed to all inbound traffic when the COTP Honolulu issues a marine safety information bulletin twelve hours before the onset of tropical storm force winds are forecasted to impact the port. All vessels over 200 gross tons must evacuate.

(6) All vessels unable to comply with this safety zone may request a waiver from the COTP Honolulu by submitting a request with their hurricane plans for review and approval by the designated representative of COTP Honolulu.

(7) The harbors will remain closed until the Coast Guard issues an “All Clear” for the harbor after the storm passes and a survey of the Harbor for potential hazards is completed by the Coast Guard.

(c) Definitions. As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP Honolulu to assist in enforcing the security zone described in paragraph (a) of this section.

(f) Enforcement period. This rule will be enforced from 11 a.m. on August 22, 2018, through 11 a.m. on August 29, 2018.

(g) Notice of enforcement. The COTP Honolulu will cause Notice of the Enforcement of these safety zones described in this section to be made by Broadcast to the maritime community via marine safety information bulletins and broadcast notice to mariners on VHF channel 16 (156.8 MHz).

Dated: August 22, 2018.

M. C. Long,
Captain, U.S. Coast Guard,
Captain of the Port Honolulu.

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